

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

DUKES CLOTHING, LLC,)
)
Plaintiff,)
) Case No.: 7:20-cv-00860
v.)
)
THE CINCINNATI INSURANCE) **OPPOSED**
COMPANY,)
)
Defendant.)

DEFENDANT THE CINCINNATI INSURANCE COMPANY'S MOTION
TO DISMISS PURSUANT TO RULE 12(b)(6)

COMES NOW Defendant The Cincinnati Insurance Company (“Cincinnati”), by and through counsel, and moves this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an order dismissing all claims asserted against Cincinnati in Plaintiff’s Complaint. As grounds for said motion, Cincinnati asserts that Plaintiffs have failed to state a claim upon which relief may be granted and Cincinnati therefore is entitled to be dismissed as a matter of law. In support of its motion, Cincinnati relies its Brief in Support of Its Motion to Dismiss Pursuant to Rule 12(b)(6), Fed. R. Civ. Pro. filed contemporaneously herewith, which includes the following attached and incorporated exhibits:

- Exhibit A: Certified Copy of Insurance Policy issued to Duke's Clothing;
- Exhibit B: Order Granting Defendant's Motion to Dismiss in *Sandy Point Dental, PC, v. The Cincinnati Ins. Co.*, Case No. 1:20-cv-02160, 2020 WL 5630465 (N.D. Ill. September 21, 2020)
- Exhibit C: 11th Circuit Opinion in *Mama Jo's, Inc. v. Sparta Ins. Co.*, Case No. 18-12887, 2020 WL 4782369 (11th Cir. Aug. 18, 2020) (Proctor J., sitting by designation);
- Exhibit D: April 28, 2020 Order of the Alabama State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19;
- Exhibit E: CDC Reopening Guidance for Cleaning and Disinfecting (4/28/2020);
- Exhibit F: Order Granting Defendant's Motion to Dismiss in *Diesel Barbershop, LLC, et al. v. State Farm Lloyd's*, Case No. 5:20-CV-461-DAE (W.D. Tex. Aug. 13, 2020);
- Exhibit G: Order Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment in *Rose's 1, LLC, et al. v. Erie Ins. Co.*, Civil Case No. 2020 CA 002424 B (Sup. Ct. D.C. Aug. 6, 2020);
- Exhibit H: July 1, 2020 hearing transcript from *Gavrilides Mgm't Co., LLC v. Michigan Ins. Co.*, Case No. 20-258-CB-C30 (Mich. Cir. Ct., Ingham Cty.);
- Exhibit I: Order Granting Defendant Michigan Insurance Company's Motion for Summary Disposition in *Gavrilides Mgm't Co., LLC v. Michigan Ins. Co.*, Case No. 20-258-CB-C30 (Mich. Cir. Ct., Ingham Cty., July 21, 2020);

- Exhibit J: File-stamped copy of hearing transcript in *Social Life Magazine, Inc. v. Sentinel Ins. Co., Ltd.*, 1:20-cv-03311-VEC (S.D.N.Y.); and
- Exhibit K: Order Granting Defendant's Motion to Dismiss and Denying Plaintiff's Motion to Remand in *10E, LLC v. Travelers Indem. Co. of Conn.*, Case 2:20-cv-04418, Dkt. No. 38 (C.D. Cal. August 28, 2020).

WHEREFORE, PREMISES CONSIDERED, Cincinnati moves this Court to dismiss Plaintiff's Complaint for failure to state a claim under Fed. R. Civ. Pro. 12(b)(6).

Respectfully submitted,

/s/ Augusta S. Dowd
Augusta S. Dowd (ASB-5274-D58A)
One of the Attorneys for Defendant
The Cincinnati Insurance Company

OF COUNSEL:

WHITE ARNOLD & DOWD P.C.
2025 Third Avenue North, Suite 500
Birmingham, AL 35203
Telephone: (205) 323-1888
Facsimile: (205) 323-8907
adowd@whitearnoldanddowd.com

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all the CM/ECF participant counsel of record.

/s/ Augusta S. Dowd
OF COUNSEL